CF0000062857

(2)

IN THE HIGH COURT OF JUDICATURE AT BILASPUR

CHHATTISGARH

Criminal Appeal No. 96/2000

APPELLANT (IN JAIL)	:	Bhojram S/o. Bhururam Satnami, aged about 23 years ,R/o village Diwan pur , P/s Pathalgaon, Distt-Raigarh.
		Versus
RESPONDENT	:	State Of CHHATTISGARH Through District Magistrate, Raigarh.

APPEAL UNDER SECTION 374 (2) OF THE CODE OF CRIMINAL PROCEDURE

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HIGH COURT OF CHHATTISGARH AT BILASPUR

Cr. Appeal No.96/2000

Bhojram Satnami

Vs.

State of Chhattisgarh

Post for Judgment : 14.08.2006

Sd/-
Dilip Raosaheb
Deshmukh
Judge

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HIGH COURT OF CHHATTISGARH AT BILASPUR

Cr. Appeal No.96/2000

Single Bench: Hon'ble Shri **Dilip Raosaheb Deshmukh, J.**

Bhojram Satnami

Versus

State of Chhattisgarh

Shri H.S. Patel, learned counsel for the appellant.

Shri MPS Bhatia, learned Panel Lawyer for the State/respondent.

JUDGMENT

(Passed on 14th August, 2006)

This appeal is directed against the judgment dated 12.12.2000 delivered by Ajit Singh, learned 1st Addl. Sessions Judge, Distt. Raigarh (CG) in Sessions Trial No. 172/1997 whereby the appellant was convicted under Section 376 (1) IPC and was sentenced to undergo rigorous imprisonment for 7 years.

2. Briefly stated the prosecution story is that a written complaint vide exhibit P-2 was lodged by the prosecutrix aged less than 16 years in P.S. Pathalgaon that since long, the appellant herein was sexually exploiting her on the assurance of marriage. Upon such a complaint, the prosecutrix was medically examined by Dr. A. Ekka PW-12 on 3.4.1997. She found 14 teeth on each jaw of the prosecutrix, there was no external injury on her person. Her secondary sexual characters were fully developed. There was no injury on her private parts. It

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was opined that the prosecutrix was habitual of sexual intercourse. The School Admission Register i.e. Ex.P-13 showing the date of birth of the prosecutrix as 10.1.1982 was seized. Radiological test for confirmation of age was conducted by Dr. M.D.Joshi P.W.9 who opined vide report Ex.P.7 that age of the prosecutrix was between 15 to 16 years. On medical examination, it was found that the appellant was capable of performing sexual intercourse. After completion of investigation, the appellant was prosecuted under Section 376 (1) of IPC.

3. The appellant abjured the guilt and pleaded that the prosecutrix was in love with him and she used to write love letters which were duly replied by him. The prosecutrix had lodged a false report against him since his marriage was settled with another girl. The prosecution examined as many as 14 witnesses. One constable Jayram Bhagat DW-1 and head constable Kiranram Bhagat DW-2 were examined as defence witnesses. Relying upon the evidence led by the prosecution, the learned trial Judge convicted and sentenced the appellant as aforesaid in para 1.

4. Learned counsel for the appellant has assailed the impugned judgment on the ground that the evidence led by the prosecution establishes beyond doubt that the prosecutrix was a woman aged more than 16 years on the date of occurrence and that sexual intercourse, if any, committed by the appellant with her, was with her consent. On the other hand, Shri MPS Bhatia,

learned Panel Lawyer argued in support of the impugned judgment.

5. Having considered the rival contentions, I have perused the record of Sessions Trial No. 172/1997. The School Admission Register Ex.P-13 was proved by the teacher Sonsai Bhagat PW-14. However, he admitted that the entry relating to the prosecutrix in the Register was not made by him. The basis for recording the date of birth of the prosecutrix as 10.1.1982 in the School Leaving Register has also not been mentioned in Ex.P-13-C. The testimony of Radha Bai PW-3, the mother of the prosecutrix, aged 44 years assumes importance in such a situation. She stated that the prosecutrix was aged 16 years and that she did not know the date of birth of the prosecutrix. She deposed that she was married at the age of 16-17 years and 4 years after the marriage, the prosecutrix was born. In this view of the matter, age of the prosecutrix appears to be much more than 16 years on the date of occurrence. The findings recorded by Dr. A. Ekka P.W.12 in her report Ex.P.9 about development of the secondary sexual characters, presence of 14 teeth in each jaw, the commencement of menstrual cycle two years prior to the examination, if read with her testimony in paragraph 4 does not rule out the possibility that the prosecutrix was aged more than 16 years on the date of occurrence.

6. The ossification test was conducted by radiologist Dr. M.D. Joshi on 4.4.1997. According to him, the age of the prosecutrix was between 15-16 years. Since the primary

evidence of proof of date of birth of the prosecutrix has not been produced and the School Leaving Register does not mention any basis for recording the date of birth of the prosecutrix as 10.1.1982, and also in view of the testimony of Radha Bai PW-3, mother of the prosecutrix, and in the facts and circumstances mentioned above the possibility that the prosecutrix was more than 16 years of age on the date of occurrence cannot be ruled out. The legally permissible margin of error in the estimation of age given in the report of ossification, if considered, it cannot be ruled out in the above mentioned circumstances that the prosecutrix was more than 16 years of age on the date of occurrence.

7. F.I.R. lodged by the prosecutrix does not mention the exact date when the appellant first committed sexual intercourse with her. Uma Shanker PW-4 has stated that the prosecutrix had told him that upon an assurance of marriage, the appellant was committing sexual intercourse with her. Bhuvneshwar PW-5 has also stated that on being called by Shyamlal, he had gone to his house and found the prosecutrix inside the house with the appellant who said that the prosecutrix was his wife. Thereafter, they left the appellant and the prosecutrix inside the house of Shyamlal. His testimony does not show that the prosecutrix had raised any alarm. Tilak Ram PW 6 has also stated that he had seen the prosecutrix and the appellant sleeping on the same cot and the prosecutrix had told him that the appellant had assured to

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marry her. The love letters written by the prosecutrix to the appellant Ex.D-3 to D-7 were shown to Tilak Ram PW-6 who admitted that they were in the hand writing of the prosecutrix. In para 8 of her testimony, the prosecutrix also admitted that the appellant used to write love letters to her to which she used to reply. Malikram P.W.7 also stated that on seeing the appellant with the prosecutrix inside the house of Shyam, the appellant told him that they have mutually developed a relationship. He also stated that the prosecutrix did not complain against the appellant.

8. In para 2 of her testimony, the prosecutrix has clearly admitted that she did not divulge the fact of her being sexually exploited by the appellant till the appellant initiated talks for marrying another girl. Radha Bai P.W.3 also deposed that the appellant used to visit her house in her absence and on being scolded used to assure her that he would marry the prosecutrix. She admitted that the prosecutrix told her only after marriage of the appellant was settled with one Gita and it was only then that they lodged the report. This clearly reveals that the sexual relationship was developed by the prosecutrix voluntarily and of her own free will with the appellant. After a lapse of time, when the appellant expressed his intention to marry another girl, a report was lodged. There is nothing in her evidence to demonstrate that without any scope for deliberation, she succumbed to the psychological pressure exerted or allurements made by the accused in a weak moment. Nor does her evidence indicate that she was incapable of

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understanding the nature and implications of the act which she consented to. On the other hand, the scrutiny of evidence of the prosecutrix gives a contra-indication. She was fully aware of the moral quality of the act and the inherent risk involved and that she considered the pros and cons of the act. The prospect of the marriage proposal not materializing had also entered her mind. Thus, her own evidence reveals that she took a conscious decision after active application of mind to the things that were happening.

9. Considering the testimony of Umashanker PW-4, Bhuvneshwar PW-5, Tilak Ram PW-6 and Malik Ram PW-7 as also the facts and circumstances mentioned above, there seems not even an iota of doubt that the appellant had developed sexual relationship with the prosecutrix with her consent. In view of the fact that the prosecutrix was more than 16 years of age on the date of occurrence and in view of her voluntary consent to the sexual relationship with the appellant, the evidence led by the prosecution does not establish the guilt of the appellant under Section 376 (1) of IPC. It seems to be a case of breach of promise to marry rather than a case of false promise to marry for which the accused is prima facie accountable for damages under civil law. Therefore, conviction and sentence under Section 376(1) IPC against the accused - appellant is liable to be set aside.

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10. In the result, this appeal is allowed. Conviction of the appellant under Sections 376 (1) IPC and the sentence awarded thereunder by the learned trial Judge is set aside. The appellant is acquitted and shall be set at liberty forthwith, if not required in any other case.

Sd/-
Dilip Raosaheb
Deshmukh
Judge

Priya